Application No. 09/524,310
Filed: March 14, 2000
TC Art Unit: 3627
Confirmation No.: 8521

REMARKS

The foregoing Amendment is filed in response to the official action dated April 21, 2005. Reconsideration is respectfully requested.

The status of the claims is as follows:

Claims 1-7, 9-28, 30-33, 35-36, and 61-65 are currently pending.

Of the above, claims 64-65 are withdrawn from consideration.

Claims 1-7, 9-28, 30-33, 35-36, and 61-63 stand rejected.

Claims 1, 33, and 35-36 have been amended.

The Examiner has rejected claims 1-7, 9-28, 30-33, and 35-36 under 35 U.S.C. 103(a) as being unpatentable over Kahn et al. (USP 6,401,079) in view of Swart (USP 6,347,306). The Applicants respectfully traverse these rejections of the claims on the basis that the cited Kahn and Swart references, taken alone or in combination, neither teach nor suggest the subject matter of amended base claims 1, 33, and 35-36, when such subject matter is considered "as a whole". Accordingly, it is respectfully submitted that the rejections of base claims 1, 33, and 35-36 and the claims dependent therefrom are unwarranted and should be withdrawn.

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For example, the Kahn and Swart references, taken alone or in combination, neither teach nor suggest the subject matter of amended claim 1, which recites a method of automatically calculating an employee's compensation, including, in a processor, associating sets of attributes with pay categories; associating a compensation qualifier with each pay category; collecting information corresponding to identified transactions, the identified transactions including punch information; forming one or more completed shifts, responsive to the identified transactions and the employee's schedule; splitting the employee's shifts into a plurality of sub-shifts, responsive to work parameters, <u>wherein the punch information includes information relating to actual times when at least one of the completed shifts begins and finishes, actual times when each sub-shift within the at least one completed shift begins and finishes, and actual times when the employee changes work assignments during the at least one completed shift, each work assignment corresponding to at least one respective sub-shift within the at least one completed shift;</u> and for each sub-shift, determining a set of attributes for the sub-shift, determining a pay category with which the set of attributes is associated, assigning the pay category to the sub-shift, and determining compensation for the employee for the sub-

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shift, responsive to the assigned pay category, the employee's base pay and a compensation qualifier associated with the pay category, <u>thereby allowing compensation to be determined for the employee who begins and finishes work at different times during the at least one completed shift, and who has different work assignments during different sub-shifts within the at least one completed shift.</u>   Such a method of determining employee compensation is disclosed throughout the instant application, for example, see page 1, lines 11-13, page 4, lines 19-20, page 5, line 27, to page 6, line 2, page 6, lines 15-18, and Fig. 1, of the application.

In contrast, the Kahn reference teaches calculating an employee's income for a pay period by calculating a base rate income (e.g., hourly or salary), calculating overtime income, calculating imputed income (i.e., non-paid income such as domestic-partner benefits, use of company car, per diem in excess of standard amount, life insurance in excess of standard amount, etc.), and calculating extra income (i.e., non-timesheet income such as bonuses, commissions, tips, vacation pay, benefit accrual, etc.).   See column 16, lines 5-22, of Kahn et al.   The Kahn reference specifically points out that traditional stand-alone payroll systems and services do not offer automatic overtime or

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imputed income calculations, as this invention of Kahn et al. provides (see column 16, lines 22-25, of Kahn et al.). Significantly, the Kahn reference fails to explicitly disclose utilizing information relating to actual times when at least one completed employee shift begins and finishes, actual times when each sub-shift within the completed shift begins and finishes, and actual times when the employee changes work assignments during the completed shift, in which each work assignment corresponds to a respective sub-shift within the completed shift, as recited in amended claim 1.

The Applicants respectfully point out that the Swart reference fails to cure this deficiency of the Kahn reference. Although the Swart reference teaches calculating net pay for a work segment completed by an employee, in real-time and immediately upon entry of shift completion information, by determining gross work segment pay based on the shift completion information and pay amount information, and the net work segment pay by applying pay deduction information to the gross work segment pay (see column 2, line 54, to column 3, line 3, of Swart), the Swart reference provides no hint as to how compensation would be calculated for an employee who has different work assignments during different work segments, and who therefore

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performs different duties during the various work segments within the completed shift.

The Wynn reference (USP 5,717,867) cited in the official action was not relied upon by the Examiner in her rejections of base claims 1, 33, and 35-36 and the claims dependent therefrom under section 103 of the Patent Law. The Applicants respectfully point out, however, that like the Swart reference, the Wynn reference fails to cure the deficiencies of the Kahn reference. Specifically, the Wynn reference neither teaches nor suggests how compensation might be *automatically* calculated for an employee who has different work assignments during different sub-shifts within a completed shift, as recited in amended claim 1.

For example, Wynn *et al.* teach a job change function of a time clock, which is used when an employee will be or has been working at a different job than his normally assigned job, thereby necessitating different accounting procedures or different pay for the employee. Such a job change function is depicted in Fig. 12 of the Wynn reference (see also column 21, line 66, to column 23, line 20, of Wynn *et al.*). As shown in steps **356** and **366** of Fig. 12, if the time clock is not allocated to a specific department or division of the workplace, or if the employee's supervisor decides not to enter a job code for the employee, then the supervisor is

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instructed to submit a job change form.   Further, as shown in steps **370, 372, 378,** and **381-382,** if the supervisor decides to enter the job code, then the supervisor is subsequently instructed to type the job code, to type the job code number, to confirm whether the job name is correct, and to confirm whether the job is correct before the job change is accepted in step **384** (see Fig. 12 of Wynn et *al.*).   <u>Clearly, this job change function disclosed by</u> <u>Wynn *et al.* cannot be employed for *automatically* determining</u> <u>compensation for an employee who has different work assignments</u> <u>during different sub-shifts within a completed shift,</u> as recited in amended claim 1.   In the job change function of the Wynn reference, in order to make a job change for an employee, <u>the</u> <u>employee's supervisor is required to manually intervene no less</u> <u>than six times!</u>

Because the Applicants' method of automatically calculating an employee's compensation operates on identified transactions such as punch data, which includes information relating to actual times when at least one completed shift begins and finishes, actual times when each sub-shift within the completed shift begins and finishes, and actual times when the employee changes work assignments during the completed shift, each work assignment corresponding to at least one respective sub-shift within the

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completed shift, as recited in amended claim 1, the Applicants' method can be employed to <u>automatically</u> determine the compensation for an employee who begins and finishes work at various times during a complete shift, and who performs different duties during various sub-shifts within the complete shift.

As explained above, the Kahn reference fails to explicitly disclose utilizing information relating to actual times when at least one completed shift begins and finishes, actual times when each sub-shift within the completed shift begins and finishes, and actual times when an employee changes work assignments during the completed shift, in which each work assignment corresponds to a respective sub-shift within the completed shift. As further explained above, the Swart reference provides no hint as to how compensation would be calculated for an employee who has different work assignments during different work segments within a completed shift, and therefore fails to cure the deficiencies of the Kahn reference. The Applicants therefore respectfully submit that the cited Kahn and Swart references, taken alone or in combination, do not render the subject matter of amended claim 1 and the claims depended therefrom obvious, when such subject matter is considered "as a whole".

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For substantially the same reasons as those outlined above with respect to amended claim 1, the Applicants further submit that the cited Kahn and Swart references, taken alone or in combination, do not render the subject matter of amended base claims 33 and 35-36 and the claims dependent therefrom obvious, when such subject matter is considered "as a whole". Accordingly, it is respectfully submitted that the rejections of claims 1-7, 9-28, 30-33, and 35-36 under 35 U.S.C. 103 are unwarranted and should be withdrawn.

The Examiner has rejected claims 61-63 under 35 U.S.C. 103(a) as being unpatentable over the Kahn reference in view of the Swart reference, as applied to claim 1 above, and further in view of the Wynn reference. However, as explained above, the Wynn reference, like the Swart reference, fails to cure the deficiencies of the Kahn reference. In addition, the Applicants respectfully point out that claim 61 recites the step of automatically making an employee shift assignment. In contrast, the Wynn reference merely discloses a job change function, which is employed when a particular employee has changed job assignments for a specific work shift (see column 5, lines 4-8, and Fig. 12 of Wynn et al.). The Applicants respectfully submit that making a shift assignment is significantly different from making a job assignment. The

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Applicants further submit that even though Wynn et al. disclose storing information from time clocks in a plurality of hours data structures (see column 14, lines 18+, of Wynn et al.), the Wynn reference provides no hint as to how the information stored in these data structures might be used to make an employee shift assignment. As indicated on page 6 of the official action, the Kahn and Swart references fail to cure this deficiency of the Wynn reference.

Accordingly, even if the teachings of the Kahn, Swart, and Wynn references were combined, as suggested in the official action, the resulting combination would not render claims 61-63 obvious. It is therefore respectfully submitted that the rejections of claims 61-63 under 35 U.S.C. 103 are unwarranted and should be withdrawn.

In view of the foregoing, it is respectfully submitted that the present application is in a condition for allowance. Early and favorable action is respectfully requested.

The Examiner is encouraged to telephone the undersigned Attorney to discuss any matter that would expedite allowance of

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the present application.

Respectfully submitted,

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